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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 SUZETTE KELLY, et al.,  
12 Plaintiffs,  
13 v.  
14 FASHION NOVA, INC.,  
15 Defendant.  
16

Case No. CV 23-02360 JAK (RAOx)

**ORDER ACCEPTING REPORT  
AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE  
JUDGE**

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed Defendant Fashion Nova,  
18 LLC's ("Fashion Nova") Motion for Sanctions for Spoliation of Evidence and to  
19 Strike Deposition Testimony in Errata Sheet ("Motion"), Dkt. No. 101, Fashion  
20 Nova's Supplemental Memorandum, Dkt. No. 131, all of the other records and files  
21 herein, and the Magistrate Judge's Report and Recommendation ("Report"), dated  
22 October 30, 2023, Dkt. No. 153. The time for filing objections to the Report has  
23 passed and no objections have been received. The Court hereby accepts and adopts  
24 the findings, conclusions, and recommendations of the Magistrate Judge.

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1 Accordingly, IT IS ORDERED that Fashion Nova's Motion is granted in part  
2 and denied in part as follows:

3 (1) Fashion Nova's request for monetary sanctions under Federal Rule of Civil  
4 Procedure 37(e)(2) for reasonable expenses, including attorneys' fees, is  
5 granted, and the matter is referred back to the Magistrate Judge for further  
6 proceedings on the determination of the amount of such monetary  
7 sanctions.

8 (2) Fashion Nova's request for an adverse inference instruction under Rule  
9 37(e)(2) is granted to the extent that, if the case proceeds to trial, an  
10 instruction will be provided to the jury that it may presume the lost  
11 YouTube videos were unfavorable to Plaintiffs, including that the videos  
12 would have shown the patented designs.

13 (3) Fashion Nova's request for terminating sanctions or a mandatory adverse  
14 inference instruction is denied.

15 (4) Fashion Nova's request to strike the errata sheet for Plaintiff Suzette  
16 Kelly's deposition testimony is denied, but Fashion Nova will be permitted  
17 to use the original deposition testimony for cross-examination and  
18 impeachment purposes.

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20 DATED: November 16, 2023

  
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JOHN A. KRONSTADT  
UNITED STATES DISTRICT JUDGE